

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal- State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
1998 Biennial Regulatory Review-	)	CC Docket No. 98-171
Streamline Contributor Reporting	)	
Requirements Associated with Administration	)	
of Telecommunications Relay Service, North	)	
American Numbering Plan, Local Number	)	
Portability, and Universal Service Support	)	
Mechanisms	)	
	)	
Telecommunications Services for Individuals	)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the	)	
Americans with Disabilities Act of 1990	)	
	)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution	)	
Factor and Fund Size	)	
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

**REPLY COMMENTS OF SOUTHERN LINC**

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission, Southern Communications Services, Inc., d/b/a Southern LINC ("Southern"), by its attorneys, respectfully submits these Reply Comments in response to the Further Notice of Proposed Rulemaking in the above-captioned matter.<sup>1</sup>

<sup>1</sup> Federal-State Joint Board on Universal Service, *et al. Further Notice of Proposed Rulemaking*, CC Docket No. 96-45; FCC 02-43 (rel. February 26, 2002) ("Further Notice").

## I. INTRODUCTION

Southern agrees with the majority of commenters filing in response to the *Further Notice* who believe that the Commission's proposal to modify the universal service funding program by adopting a connection-based contribution methodology, which would be implemented in part by a \$1.00 flat-fee per activated handset, should be rejected.<sup>2</sup> As stated by many commenters, the changes discussed in the *Further Notice* would be unlawful and counter-productive, as it would shift the burden of universal service recovery in a non-competitively neutral manner.<sup>3</sup> Southern, like the majority of commenters, believes that the current revenue-based collection mechanism should be maintained.

Southern operates a digital 800 MHz SMR system that utilizes Motorola's proprietary Integrated Digital Enhanced Network technology to provide both dispatch and interconnected wireless service with the same handset. Southern's service territory covers 127,000 square miles in Georgia, Alabama, the southeastern quarter of Mississippi, and the panhandle of Florida, and it serves over 250,000 customers. A large majority of Southern's customers are users whose interstate communications only amount to approximately ten percent of their overall use of their Southern LINC wireless phones.

## II. DISCUSSION

### A. The Revenue-Based Contribution Methodology Should be Maintained

Southern agrees with the majority of commenters including wireless carriers, local exchange carriers ("LECs"), paging providers, rural carriers, state public utility commissions, and the General Services Administration, who support the maintenance of the current revenue-based assessment methodology and oppose the proposed connection-based

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<sup>2</sup> See, e.g. Comments of Verizon, United States Cellular Corporation, VoiceStream Wireless Corporation, Verizon Wireless and Time Warner Telecom, *et al.* (filed April 22, 2002).

<sup>3</sup> See, e.g., Comments of Virgin Mobile USA, LLC, VoiceStream Wireless Corporation, Allied Personal Communications Industry Association of California and Arch Wireless, Inc.

contribution mechanism, which would essentially double wireless carriers' and LECs' contributions and triple paging providers assessments.<sup>4</sup> In order to maintain competitive neutrality, Southern believes that the Commission should continue to base its assessment of universal service contributions on interstate and international end-user revenues. Although interexchange carriers ("IXCs") believe that declining revenues warrant a retooling of the universal service funding methodology, the majority of commenters agree that it does not justify the scrapping of the current revenue-based methodology.<sup>5</sup> The current contribution methodology is predictable, competitively neutral and offers certainty to contributors, while the Commission's connection-based proposal offers none of these things. In addition, the IXCs' claims that the current funding mechanism will cause a universal service "death spiral" is unfounded, as overall IXC revenue is not eroding.

In addition, Southern supports the maintenance of the safe harbor percentage for determining wireless carriers interstate revenues. As many commenters stated, the percentage has worked well in the past and should be continued.<sup>6</sup> Southern believes that under the current contribution methodology, wireless carriers (and in turn, wireless customers) pay a "fair share" of the universal service contributions, even though, for many wireless carriers, such as Southern, the actual percentage of interstate calls may be less than the 15 percent figure adopted by the Commission.<sup>7</sup> Unlike wireline services, it is difficult for wireless carriers to determine the precise percentage of calls that are actually interstate; therefore, in lieu of calculating a lower (although perhaps more accurate) safe harbor percentage, Southern,

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<sup>4</sup> See, e.g. Comments of VoiceStream, AT&T Wireless, Virgin Mobile USA, LLC, National Telecommunications Cooperative Association Initial, United States Cellular Corporation, Verizon and California Public Utilities Commission, *et al.*

<sup>5</sup> See, e.g. Comments of Time Warner Telecom, *et al.*

<sup>6</sup> See, Comments of TracFone at 18.

<sup>7</sup> See, Comments of VoiceStream at 4.

with others in the wireless industry, believes that the current safe harbor percentage should be maintained.<sup>8</sup>

**B. The Commission's Unlawful Connection-Based Contribution Methodology Should be Rejected**

Southern believes that the Commission's connection-based assessment methodology is unlawful and discriminatory. As noted by VoiceStream,<sup>9</sup> the Commission's proposal is incompatible with the requirements set forth by Congress in Section 254(d) of the Communications Act of 1934, as amended, which provides the statutory mechanism for funding the federal universal service system.<sup>10</sup> Section 254(d) requires that the Commission create a nondiscriminatory mechanism to collect universal service assessments from interstate carriers. Section 254(d) states in pertinent part:

Every telecommunication carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service.<sup>11</sup>

The Commission's connection-based collection methodology is violative of Section 254(d) as it discriminates in favor of IXC's while overburdening most other telecommunications carriers, especially wireless service providers. As evidenced by the comments, only the parties that proposed the connection-based assessment fully support its implementation.<sup>12</sup>

The Commission's proposal fails to meet the directive set forth in Section 254(d), as it shifts the vast majority of universal service funding contributions from IXC's to LEC's and wireless providers by using a funding methodology that is unrelated to any carrier's share of

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<sup>8</sup> See, e.g., Comments of AT&T Wireless at 6.

<sup>9</sup> See, Comments of VoiceStream at 2.

<sup>10</sup> 47 U.S.C § 254(d).

<sup>11</sup> *Id.*

<sup>12</sup> See, Comments of Coalition for Sustainable Universal Service and AT&T.

interstate revenues. Similarly, the Commission's proposal is discriminatory, as it narrows the contribution base by substantially curtailing contributions from IXCs, the largest providers of interstate telecommunications, in turn forcing other telecommunications providers (such as LECs, wireless providers, and paging companies) and their customers to make up the difference in the universal service funding.<sup>13</sup>

Many commenters fear that the collection of higher regulatory fees could impact a customer's choice interstate telecommunications providers, as the higher universal service fees could be passed on to the consumer. The Commission's proposal would amount to at least a 117% increase for mobile customers, from an average of 46¢ to \$1.00 (actually, many wireless carriers currently collect far less than 46¢ per activated handset) which would be a large increase for cost-conscious wireless customers.

Even the Sprint Plan, which would arguably maintain the 46¢ contribution would be "sticker shock" for Southern's customers who are currently paying significantly less than that amount in universal service fees. As carriers often collect the universal service fees directly from their customers, this large increase in the monthly fee would have a direct impact on customers and may play a part in customers' technology choice, which could result in a competitive advantage for certain telecommunications providers. Southern also agrees with OnStar that the Commission's proposal would have a disproportionate impact on low income and low volume users, a segment of the market that the Commission is trying to protect.<sup>14</sup> Furthermore, carriers who do not offer nation-wide rate plans would be disproportionately harmed by the Commission's discriminatory proposal as their customers arguably make fewer interstate calls.<sup>15</sup>

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<sup>13</sup> See, Comments of Virgin Mobile USA, LLC and Verizon Wireless.

<sup>14</sup> See, Comments of OnStar at 4. See, also Comments of The Nebraska Independent Companies, Teletouch Communications, Inc., National Telecommunications Cooperative Association and TracFone.

<sup>15</sup> See, Comments of TracFone.

Southern agrees with VoiceStream's position that the Commission's proposal violates Section 254(d) as the statute requires that "every" carrier providing interstate services "shall contribute" to universal service. The Commission's connection-based approach would not satisfy this requirement, as it would allow some providers of interstate services, who do not provide local service, to contribute nothing to the federal interstate universal service program.<sup>16</sup> Southern agrees with Verizon Wireless that in order to satisfy Section 254(d) every interstate telecommunications provider must be required to contribute to the universal service fund.<sup>17</sup> The current revenue-based methodology satisfies the requirement set forth in Section 254(d) that all interstate telecommunications providers contribute to the universal service fund.

Furthermore, the Commission's proposal violates Section 2(b) of the Communications Act (as set out in AT&T Wireless' comments) because it imposes contribution obligations on intrastate services over which the Commission does not have jurisdiction.<sup>18</sup> Southern agrees with AT&T Wireless' argument that any universal service funding assessment must not be based on intrastate services.<sup>19</sup> AT&T Wireless pointed out that the Commission's proposal violates the Fifth Circuit's holding in the *Texas Office of Pub. Util. Counsel v. FCC*<sup>20</sup> case, in which the Appeals Court held that "the Commission may not include revenues in the calculation of universal service contributions because it would violate Section 2(b) of the Communications Act and is not otherwise authorized by Section 254(d)."<sup>21</sup>

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<sup>16</sup> See, Comments of VoiceStream at 14. See also, Comments of Verizon Wireless at 4, noting that "[b]ecause, as the Commission acknowledges, IXC's do not provide end-user connections to the network in most cases, IXC's could essentially eliminate USF assessments from their customers' long distance bills ...."

<sup>17</sup> See, Comments of Verizon Wireless at 4-5.

<sup>18</sup> 47 U.S.C. § 152(b).

<sup>19</sup> See, Comments of AT&T Wireless at 3.

<sup>20</sup> See, *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 447 (5<sup>th</sup> Cir. 1999).

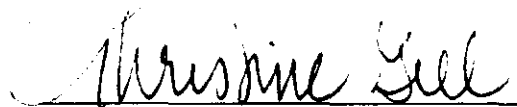
<sup>21</sup> Comments of AT&T Wireless at 3.

Moreover, Southern agrees that it is difficult to rebut the argument set forth in AT&T Wireless' comments that "pursuant to the Fifth Circuit's analysis in [the *Texas* case], there is no escaping Section 2(b)'s restrictions simply through adoption of a connection-based assessment. Such assessment still is a 'charge' and to the extent the services provided over those connection are intrastate, the charge, is 'in connection with intrastate communications service'" and is therefore a violation of the statute.

### III. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Southern LINC respectfully requests that the Commission reject the connection-based proposal set forth in the *Further Notice*, and act consistent with the views expressed herein.

Respectfully submitted,



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Dated: May 13, 2002

**CERTIFICATE OF SERVICE**

I, Jane Aguilard, hereby certify that on May 13, 2002, copies of the foregoing Reply  
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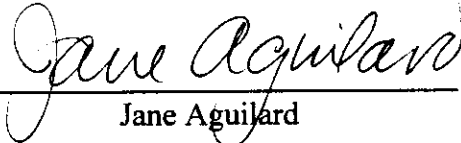
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